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13 May 1975

OGC Has Reviewed

MEMORANDUM FOR: CIA Information Review Committee

SUBJECT : Third Agency Rule Under the Freedom of Information Act

1. As the Committee has been previously informed, the Department of Justice has expressed the opinion that our regulation regarding the handling of third agency documents under FOI will probably be overturned by the courts. (The CIA regulation, as published in the Federal Register, states that documents originated by agencies other than the CIA are not considered "records" under the FOIA.) Inasmuch as we have already revealed the existence of other agency documents to requesters, in some cases in the first instance and in all cases on appeal and in litigation, it becomes clear that we should, henceforth, adopt procedures to be consistently followed in all cases.

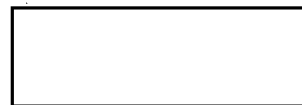
2. Attached hereto is a memorandum recording a tentative agreement with the FBI concerning proposed handling of FBI documents as well as other FBI information found in CIA files. If the Committee approves, we will, after coordination with the FBI, try to obtain Justice's approval of the arrangement and, hopefully, have it adopted as a Government-wide procedure. At the present time, there is no consistency among various agencies for handling third agency documents.

3. We can anticipate a Justice Department objection to paragraph 2b(2) of the attached. The only legal basis for the third agency rule is found in Executive Order 11652 and its implementing directives which do not, however, deal with unclassified documents.



Office of General Counsel

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OGC 75-1860

13 May 1975

MEMORANDUM FOR THE RECORD

SUBJECT: Arrangement With the FBI Regarding Handling Under the
FOIA of FBI Material in CIA Files

The following arrangement concerning the subject matter was agreed to in a telephone conversation on May 7, 1975, between [redacted] Freedom of Information Officer at the FBI, and [redacted] Office of General Counsel, CIA:

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1. When FBI documents are found among CIA records in connection with an FOI request and the requester has an FOI request pending with the FBI:
 - a. Inform the requester that FBI documents responsive to his request have been located among CIA files and that the FBI will respond directly to the requester in the context of his pending FOI request with the FBI.
 - b. Forward to the FBI a list of all FBI documents concerning the FOI request found in CIA files.

(This procedure will be followed whether or not the FBI documents found in CIA files carry classification markings.)

2. If the requester does not have an FOI request pending with the FBI:
 - a. If the FBI documents found in CIA files carry classification markings:
 - (1) Forward to the FBI a list of all FBI documents in CIA files for the FBI's determination regarding releasability.
 - (2) Inform the requester that classified FBI documents have been found in CIA files and that the determination regarding their release has been referred to the FBI pursuant to the provisions of Executive Order 11652.

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b. If the FBI documents do not carry classification markings:

(1) CIA will, within the statutory time period, attempt to obtain the FBI's decision regarding the releasability of these documents and advise the requester as appropriate.

(2) If FBI determination cannot be obtained within the statutory time period, inform the requester that the determination regarding FBI documents found in CIA files has been referred to the FBI.

3. If FBI information is contained in CIA-originated documents, such information will be treated as though it were contained in FBI documents and the above procedures will be followed

a. A list of FBI documents, on which the information in CIA-originated document was based, will be forwarded to the FBI.

b. If the FBI source documents cannot be located, CIA will forward copies of the CIA documents containing FBI information to the FBI.

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Office of General Counsel

what if FBI says not to give or not to acknowledge?

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Next 2 Page(s) In Document Exempt

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